

VICKI STEFANINI
PO BOX 54124
SAN JOSE CA 95154
Phone Number: 4082096581
VICKISTEFANINI@GMAIL.COM

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SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

B/a

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

VICKI STEFANINI,

Case Number: Case No. 5:18-cv-07051-NC

Plaintiff,

**PLAINTIFF OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT**

vs.

[Santa Clara Cty. Super. Ct. Case No. 18-CV-333645]

HEWLETT PACKARD ENTERPRISE
COMPANY, STEPHEN CARLOCK and
DOES 1-50, inclusive,

FAC Filed: December 24, 2019

Defendant(s).

December 24, 2019

**Re: Stefanini v. HP Motion Summary Judgment
Case # 5:18-cv-07051-NC**

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I. INTRODUCTION

Stefanini has been in the telecommunication networks industry for decades. Initially, she began her career on the engineering side, helping companies like Comcast, AT&T, T-Mobile, Google, Salesforce, Adobe, Dropbox, Single Digits, Akamai, CenturyLink, Level 3 and Sprint build their networks. Then she transitioned to the sales side of the business, leveraging her engineering background to manage accounts with these and other telecom companies. Her technical knowledge allowed her to speak the same lingo as her customers in the sales arena. While at HP Inc following Split HPE, Stefanini picked up accounts for the largest telecom customers, such as Comcast, AT&T, BT Telecom, NTT as well as increased the revenue generated for HPE from smaller accounts such as Windstream, Frontier, Radisys and Savvis.

However, when a change in management occurred on her team on or about November, 2015, Stefanini's accomplishments were minimized. Although she had been working long hours to land key accounts, she was told that her male colleagues should handle certain accounts because those customers wanted a male and that by virtue of her sex, she was not a fit. Key accounts that Stefanini had closed with projected revenues in excess of \$1 million were transferred to her male colleagues. This interfered with her ability to make her required sales numbers and resulted in her losing the commissions.

To make matters worse, Stefanini went out on medical leave as she battled cancer. The few accounts that had remained assigned to her prior to the leave, were promptly taken away from her after she returned from leave. She was told she was underperforming and was being terminated as part of a Work Force Reduction (WFR). However, prior to her accounts being transferred to underperforming male employees on her team, her performance had not been an

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1 issue. Stefanini's termination was the result of gender and disability discrimination and has
2 resulted in extensive damage to her.

3 II. FACTS

4 A. Plaintiff's Qualifications

5
6 Stefanini holds a bachelor's degree in economics and engineering and a master's degree
7 in business management. Prior to joining HPE, Stefanini had over 20 years of sales experience
8 at a mix of Fortune 500 companies and startups. At these companies, she developed market
9 strategies to increase sales and grow her customer base. She consistently exceeded her quotas
10 year after year.
11

12 This is also a profession where compensation is driven by commissions and allocation of
13 credit for sales. It is also a profession where individual employees incur expenses as a result of
14 their travel, for which reimbursements are owed. There is much room for error in calculating
15 these credits, commissions and Stefanini had to take legal action on more than one occasion to
16 enforce her rights and receive the compensation that was owed to her. She was successful in all
17 of these matters that preceded her employment at HPE. The fact that Stefanini is an intelligent
18 woman who knows her rights and will pursue what is rightfully owed to her should not discredit
19 her in the present action.
20
21

22 C. Plaintiff Joins HPE

23
24 Plaintiff joins HP Inc in or about April, 2015, as a Global Account Manager. In the last
25 two quarters of 2015 (her first two full quarters at HPE), Stefanini exceeded her sales quota by
26 approximately 300%.
27
28

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1 D. Account Transfers

2 However, shortly after Stefanini's employment at HPE began, Steven Carlock
3 ("Carlock") replaced Stefanini's previous manager. His interactions with Stefanini were
4 markedly different from those of his predecessor. As Stefanini closed deals on some of her
5 largest accounts, Carlock transferred those accounts to male colleagues on the team. Carlock
6 informed Stefanini that he was doing this because the customer's culture a male was required to
7 manage the account. Stefanini was the only female on her team, and although she resisted, the
8 decision to transfer the accounts was outside of her control.
9

10
11 Four separate such transfers occurred. The first was on or about December 2015.
12 Stefanini was informed that her Level 3, Windstream, Frontier and Zayo accounts would be
13 transferred to one of her male peers. Stefanini protested, explaining that she had done a lot of
14 revenue generation on these accounts. In fact, for some of the companies that had previously not
15 been high revenue sources for HPE, Stefanini had been able to move the accounts from a lower
16 HPE revenue Tier II to a higher Tier I.
17

18 The second transfer occurred on or about April 24, 2016. HPE management informed her
19 that both Comcast and Wandering WiFi would be transferred. Stefanini approved the Wandering
20 WiFi transfer since she had not expended much time on that account and they did not generate
21 substantial revenues for HPE. However, she protested the transfer of Comcast, since it was one
22 her highest revenue-generating accounts. She had increased the revenue on this account by over
23 \$1 million and the deals that she had negotiated hat were still coming in at that time were in
24 excess of \$10 million. But Carlock told her Comcast he wanted a male to lead that account.
25 Stefanini was even told that she couldn't attend meetings that she had set up with the client
26 unless she coordinated for one of her male colleagues to attend with her.
27
28

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1 The third transfer occurred in July, 2016. This was for the accounts involving BT
 2 Telecom, CenturyLink, and Savvis. Thanks to Stefanini, the revenues coming in were high, but
 3 HPE management informed her that they had a high need to transfer the account to a more
 4 experienced male peer.

5
 6 The fourth transfer occurred immediately after Stefanini returned from medical leave on
 7 or about October, 2016. This left her with no significant accounts to manage.

8 9 **III. MOTION FOR SUMMARY JUDGMENT**

10 Plaintiff opposes Hewlett Packard Enterprise (HPE) Motion for Summary Judgment.
 11 Defendant's motion should fail because there are substantial triable issues of material fact at
 12 issue herein. Therefore, Defendant is not entitled to judgment as a matter of law. Rather, Plaintiff
 13 is entitled to put her case in front of a jury.

14
 15 Summary Judgment may only be granted where there are no material facts in dispute and the
 16 moving party is entitled to judgment as the matter of the law. Anderson v. Liberty Lobby Inc., 4
 17 U.S. 242, 249 (1986); See also Ray v. Ropes & Gray LLP, 99 F.3d 99, 116 (1st Cir 2015) (courts
 18 exercise "particular caution" when considering an employer's motion for summary judgment
 19 raising issues of pretext, motives and intent); Frances v Johnson 95 F.3d 110, 115 (9th Cir.
 20 2015) (It does not take much for a Plaintiff in discrimination case to overcome summary
 21 judgment motion). The court must withdraw all reasonable inferences in favor of nonmoving
 22 party. Eatman Kodak Co. v. Image Technical Services, Inc., 504 U.S. 451 (1992). Credibility
 23 determinations, the weighing evidence, and drawing of legitimate inferences from the facts and
 24 jury function. Anderson v. Liberty Lobby, 4 U.S. at 255. A finding of good cause for
 25 termination requires a reasonable conclusion supported by substantial evidence gathered through
 26
 27
 28

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1 an adequate investigation that includes notice of claimed misconduct and a chance for the
 2 employee to respond. Cotran V. Rollins Hudig Hall Int'l
 3 Summary Judgment is improper as this case turns on multiple disputed material facts and
 4 determination of reasonableness, credibility, motive and intent., Inc 1 Cal. 4 th 93 (1998),
 5 emphasis added.
 6

7 **A. EMPLOYMENT DISCRIMINATION BASED ON GENDER AND**
 8 **DISABILITY (FEHA)**

9 There are disputed issues of material fact as to Plaintiff claim for Gender and Disability.
 10 Defendant terminated Plaintiff in Retaliation based on false, biased and to cover up preferential
 11 treatment to specific customers which is a violation of HPE Standards of Business Conduct
 12 Policy. There is no legal basis to grant Summary Judgment. Based on the foregoing, the Plaintiff
 13 request that the Defendants Motion for Summary Judgement be denied in it's entirety
 14
 15 Defendant discriminated against Stefanini based on gender and disability. Defendant retaliated
 16 against Plaintiff for seeking protected medical leave by terminate her. As a proximate result of
 17 Defendants' willful, knowing and intentional violation of CFRA, Plaintiff has sustained
 18 economic losses, humiliation, emotional stress, mental and physical pain on and anguish. The
 19 person who committed unlawful acts described herein were officers, directors and/or managing
 20 agents of Defendants acting within the scope of their employment. Moreover Defendants aided,
 21 abetted, coerced this discrimination. The unlawful acts described herein were committed with
 22 oppression, fraud, malice and were authorized by such officers, directors and/or managing
 23 agents. Plaintiff suffered lost wages and health problems in which her doctor advised her she
 24 needed surgery. The evidence is clear that Plaintiff received different treatment based on her
 25 gender and medical condition. Mr Carlock transferred several of her accounts to male co-workers
 26 on sales team. As a result she was paid significantly less commission. In approximately
 27 November 2015 a problem happened with MyComp Internal Sales Software Tool due to Hewlett
 28 Packard Company Split to Hewlett Packard Enterprise (HPE) and Hewlett Packard Inc (HP). In
 DECLARATION OF _____ IN SUPPORT OF

November 2015 Plaintiff's new manager was Stephen Carlock. Although this was a different business organization within North American SP Team Plaintiff was asked due to her expertise in cloud and HPE company lacking resources to essentially perform both her old job and new job duties. In Plaintiff previous position she managed large key accounts such as AT&T, Google, Comcast, Salesforce, CenturyLink. Some of these accounts were part of her new position. Mr. Carlock started ordering her to transfer her accounts to male peers once the revenue was showing close to \$1,000,000 or more. Plaintiff was managing Comcast account for both Cloud and Networking. With Comcast being a large account Plaintiff requested local engineering support. Plaintiff experienced disparate treatment within Mr. Carlock's team. On March 30, 2016 Plaintiff was subject to gender biased comments by Mr. Carlock. Plaintiff was told the Comcast account needed a male colleague present at the meeting in order to attend the meetings in March 2016. Plaintiff setup the Comcast meetings with Sr. VPs based on her relationships prior to joining HPE. Plaintiff was told if she did have a male colleague attend Comcast meetings' she would need to cancel them. Mr. Carlock told Stefanini a male was better suited to manage the account. Mr. Carlock told Stefanini he would be replacing her with one of her male co-workers. On 4/28/2016 Mr. Carlock removed Plaintiff of Comcast account and transferred key account to male coworker while Mr. Carlock required Plaintiff to stay on the account to help close sales that would benefit her male coworker.

- Misconduct for discharge was nearly identical to that engaged by an employee outside the protected class whom the employer retained Nix vs WLYC Radio/Rahall Communications, 738 F.2d 1181, 1184 (11th Cir. 1984).
- Established prima facie case of discriminatory discharge, the burden of production shifts to the employer to produce evidence of a valid, non-discriminatory reason for the discharge. This is a burden of production not a burden of proof
- Employer produces carries burden of production, the presumption of discriminatory discharge raised by prima facie case is rebutted. The employee must then establish, by preponderance of evidence that the employer stated non-discriminatory reason for discharge was a mere pretext

A. Adrian Hurel Deposition, Exhibit A
(P. 19 line 17-25), (P. 20 line 1-8), (P. 33 line 4 -15)
Exhibit 10 Standards Business Conduct Policy

DECLARATION OF _____ IN SUPPORT OF

Exhibit 34 (line 2)
Exhibit 36 (line 10 -18)

B. Stephen Carlock Deposition, Exhibit B
(P. 33 line 1-12), (P. 36 line 5-19)

C. Robert Oliver Declaration, Exhibit C1 (P.2 line1-4)

D. Robert Oliver Deposition, Exhibit C2
(P. 39-41 line 1-25), (P. 42 line 1-15), (P. 44 line 12-25), (P. 45 line 1-25), (P. 49 line 13-25), (P. 55 line 1-25), (P. 59 line 9-17), (P. 61 line 18-23), (P. 68 line 1-25), (P. 69 line 1-25), (P. 74 line 13-25), (P. 77 line 1-25), (P. 80 line 1-25), (P. 81 line 1-25), (P. 87 line 5-25), (P. 95 line 1-25), (P. 97 line 1-25), (P. 100 line 18-25)
Vicki Stefanini Deposition, Exhibit D
(P. 17 line 5-13), (P. 27 line 1-13), (P. 33 line 4 -15), (P. 57 line 8 -25), (P. 64 line 1-25), (P. 82 line 1-25), (P. 83 line 1-25)

B. UNFAIR BUSINESS COMPETITION

Summary Judgement on the issue is innappropriate under these circumstances. Evident that HP Enterprise manager was violating HP Enterprise Standards of Business Conduct Policies and discriminated against Plaintiff due to her gender and disability.

Plaintiff reported suspected illegal behavior to be investigated. Defendants have not established good cause to terminate Plaintiff employment as a matter of law because they have failed to show actions against Plaintiff were reasonable or true. Moreover Defendant "falsified records" and kept "off the book discounts" to give preferential treatment to specific customers Guestek, AT&T which is a violation of HP Enterprise Standards of Business Conduct. Defendant refused to offer customer discounts to Plaintiff making it difficult for her to close business. Defendant denied discounts to Plaintiff however once she was forced to transfer specific accounts to male employees the discounts were approved.

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On 10/17/2016 Mr. Carlock put Plaintiff on Work Force Reduction (WFR). Plaintiff let Human Resources know she did not accept, she did not sign Severance package on 10/28/2016 for \$53,149.03 due to her concern of over \$10,000,000 unpaid commission. Plaintiff was selected for WFR in Retaliation for taking CFRA/FMLA protected medical leave and for complaining of management violation of HPE Standards of Business Conduct. Criteria for HPE WFR was based on (1) Performance, (2) Sales Experience and (3) Education. Plaintiff ranked higher than Male coworker who retained his position in all 3 areas. Mr. Carlock forced Plaintiff to transfer 80% of her accounts to male coworker and then chose her for HPE Work Force Reduction.

COMPARISION BETWEEN STEFANINI /MALE RETAINED POSITION

Quota for 2016

Male at 10%

Stefanini at 300%

Experience

Male, 2 year degree

Stefanini, Master's degree

Sales Experience

Male, 16 years

Stefanini 21 years

A. Adrian Hurel Deposition, Exhibit A
(P. 19 line 17-25), (P. 20 line 1-8), (P. 33 line 4 -15)

Exhibit 10 Standards Business Conduct Policy
Exhibit 34 (line 2)
Exhibit 36 (line 10 -18)

B. Stephen Carlock Deposition, Exhibit B
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(P. 39-41 line 1-25), (P. 42 line 1-15), (P. 44 line 12-25), (P. 45 line 1-25), (P. 49 line 13-25), (P. 55 line 1-25), (P. 59 line 9-17), (P. 61 line 18-23), (P. 68 line 1-25), (P. 69 line 1-

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25), (P. 74 line 13-25), (P. 77 line 1-25), (P. 80 line 1-25), (P. 81 line 1-25), (P. 87 line 5-25), (P. 95 line 1-25), (P. 97 line 1-25), (P. 100 line 18-25)

Vicki Stefanini Deposition, Exhibit D

(P. 17 line 5-13), (P. 27 line 1-13), (P. 33 line 4 -15), (P. 57 line 8 -25), (P. 64 line 1-25), (P. 82 line 1-25), (P. 83 line 1-25)

C. WRONGFULLY TERMINATION IN VIOLATION PUBLIC POLICY

D. RETALIATION FOR TAKING CFRA RIGHTS GOVT CODE 12945

E. INTERFERENCE WITH FMLA RIGHTS

There are disputed issues of material fact as to the amount of wages owed and commissions unpaid due to account transfers to male employees and MyComp Faulty Sales Compensation Software. There is no legal basis to grant Summary Judgment. Based on the foregoing, the Plaintiff request that the Defendants Motion for Summary Judgement be denied in it's entirety Plaintiff filed complaint with DFEH California Dept of Fair Employment and Housing, Plaintiff received a Right To Sue from DFEH. HPE owed a duty to Plaintiff to prevent discrimination from occurring against her in their employment relationship. Within a few days after HPE's finding of "No Discrimination" from complaint to Human Resources she was laid off just after returning from medical leave between 3/25-3/29/2016 of her ongoing cancer condition and her need to take medical leave as well as concurrent treatment for anxiety. Mr. Carlock instigation of performance reviews of Plaintiff, based on false pretences of underperformance in sales, all while Mr. Carlock continued to interfere with Plaintiff's ability to work successfully with current and potential customers of HP by placing roadblocks to her performance by providing Plaintiff's male colleagues assistance and transferring her revenue generating accounts to her male colleagues.

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1 Plaintiff suffered from employment discrimination based on Gender (FEHA) where HPE
2 interfered with my FMLA rights and retaliated against me for taking protected medical leave. I
3 suffered lost wages and discrimination based on my health problems in which my doctor advised
4 me I needed surgery. The evidence is clear that Plaintiff received different treatment based on
5 my gender and medical condition. In November 2015 my new manager Stephen Carlock
6 although this was a different business organization Plaintiff was asked due to my expertise in
7 cloud and company lacking resources to essentially perform both her old job and new job.
8 Plaintiff's previous position she managed large key accounts such as Comcast, Salesforce,
9 CenturyLink these very same accounts were part of my new position however Mr. Carlock
10 ordered her to transfer the account once the revenue was showing close to \$1,000,000 or more to
11 my male peers. Plaintiff has sustained humiliation, emotional distress, mental and physical pain
12 and anguish.

13
14 In order to show employment discrimination based on gender, the employee must show that (1)
15 she is the member of a protected class; (2) she was qualified for her position and was
16 satisfactorily performing her job duties; (3) she experienced an adverse employment action; and
17 (4) other similarly situation employees outsider of her protected class were treated more
18 favorably. *Hawn v. Executive Jet Mgmt., Inc.*, 615 F.3d 1151, 1156 (9th Cir. 2010) (citing
19 *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 603 (9th Cir. 2004)). Stefanini will be able to
20 establish that based on the facts noted above, as well as additional facts she anticipates will be
21 revealed through discovery. Stefanini expects that her personnel file will show her qualifications
22 and the timing of the adverse action against her relative to her complaints of gender
23 discrimination. She also expects that discovery into commission earnings by her relative to her
24 male colleagues on her team will also support her claim. As such, the burden will then shift to
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1 HPE to show that there was a legitimate reason for the adverse employment action. Curley v.
2 City of N. Las Vegas, 772 F.3d 629, 632 (9th Cir. 2014). HPE has attempted to do this by
3 asserting that Stefanini was underperforming. However, Stefanini will be able to show that her
4 performance was not accurately recorded. The fact that MyComp was riddled with errors, but
5 that her manager only corrected those errors for her male colleagues, and not her supports her
6 position that she was not underperforming. In addition, the fact that her accounts that she had
7 worked up were transferred to her male colleagues right before the commissions could be
8 assigned, but after they had been earned by her, will further show that her performance was not
9 accurately recorded. Finally, the impact of her medical leave on her sales performance will also
10 be noted. As such, Stefanini will be able to show that she was the subject of gender-based
11 employment discrimination.
12

14 March 22, "Customer wants a male on the account"

16 March 29 "Comcast need a male to attend VP meeting that were setup by Stefanini due to her
17 relationship. HP was unable to secure meetings with Comcast VPs without Stefanini's
18 relationship in the account."
19

20 Although Stefanini was on medical leave for approximately three (3) months in 2016 and was
21 not working on her sales accounts during that time, her overall production for the fiscal year
22 exceeded quota. Regardless, her leave status is not something the employer can legally consider
23 when selecting candidates for layoff. Instead, seniority, performance, education and other such
24 criteria are to be considered. Stefanini believes that had these factors been considered, she
25 would not have been laid off because other candidates on her team had less experience and
26 performance that was not as good as hers; those candidates should have been prioritized over her
27 for a Work Force Reduction. Plaintiff managing Comcast account for Cloud and Networking I
28

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1 requested local engineering support. Once account showing large revenue opportunities manager
 2 transferred to male peer. Culture within Mr. Carlock sales team disparate treatment to females.
 3 On March 30, 2016 I was subject to gender biased comment by Mr. Carlock. The Comcast
 4 account needed male approval or she could not attend the meetings that Plaintiff setup with
 5 Comcast. Mr. Carlock told me a male was better suited to manage the account and that women
 6 are not a fit. He then told me he would be replacing me with a male co-worker. Mr. Carlock
 7 instigation of performance reviews. Where evidence is not available the 3 Step procedure
 8 McDonnell Douglas Corp vs Green 411 U.S. 792, 802, 93 S. Ct. 1817 (1973). Once the above
 9 evidence have been established a primas faci case discrimination exist. Then puts on employer
 10 for reasons for adverse to present evidence for adverse employment action. This is a burden of
 11 production not a burden of proof. If employer shows proof then employee must show employer
 12 non-discriminatory reason for employment action was a mere pretext. To prove disparate
 13 treatment under Title VII, the employee must show that the employer acted with discriminatory
 14 purpose.

15
 16
 17
 18 The case Johnson v. United Cerebral Palsy/Spastic Children's Foundation of Los Angeles et al.,
 19 13 Cal App. 4th 40 (2009) (Cerebal Palsy) which distinguishes the King case and reversed
 20 Summary Judgment against Plaintiff who brought a discrimination claim after termination. The
 21 claimant issued declarations from witnesses to substantiate claims. The court considered the
 22 witness declaration of discrimination especially persuasive and found that and found that, when
 23 taken together with other factors in the case the proffered evidence warranted reversal of the
 24 Summary Judgment (id at p. 58). In this case the Plaintiff has easily shown that she meets the
 25 first three factors for gender discrimination under FEHA (1) member of protected class, (2)
 26 Performing competently positions they held at HPE and (3) were terminated. Under Cerebral
 27
 28

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Palsy, the Plaintiff has furthermore established a record of evidencing discriminatory intent sufficient to withstand Summary Judgment. Stefanini has set forth records demonstrating that Mr. Carlock harassed and gave male employees preferential treatment for the purposes of achieving her termination.

A. Adrian Hurel Deposition, Exhibit A

(P. 19 line 17-25), (P. 20 line 1-8), (P. 33 line 4 -15)

Exhibit 10 HPE Standards of Business Conduct (P. 1-23)

Exhibit 34, (line 2)

Exhibit 36, (line 10 -18)

B. Stephen Carlock Deposition, Exhibit B

(P. 33 line 1-12), (P. 36 line 5-19)

Exhibit 7 MyComp Errors Single Digits Account

(P.1, line 1-14)

Exhibit 8 MyComp Faulty Software Tool showing unpaid commissions for PO's \$4,148,888.00 Radysis deals closed \$237,400.00, \$172,763.00, \$23,472.00

C. Robert Oliver Declaration, Exhibit C1

(P.2 line1-4)

D. Robert Oliver Deposition, Exhibit C2

(P. 39-41 line 1-25), (P. 42 line 1-15), (P. 44 line 12-25), (P. 45 line 1-25), (P. 49 line 13-25), (P. 55 line 1-25), (P. 59 line 9-17), (P. 61 line 18-23), (P. 68 line 1-25), (P. 69 line 1-25), (P. 74 line 13-25), (P. 77 line 1-25), (P. 80 line 1-25), (P. 81 line 1-25), (P. 87 line 5-25), (P. 95 line 1-25), (P. 97 line 1-25), (P. 100 line 18-25)

Exhibit B MyComp Errors

Exhibit 33, Exhibit 35, Exhibit 36, Exhibit 37

E. Vicki Stefanini Deposition, Exhibit D

(P. 17 line 5-13), (P. 27 line 1-13), (P. 33 line 4 -15), (P. 57 line 8 -25), (P. 64 line 1-25), (P. 82 line 1-25), (P. 83 line 1-25)

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F. Failure to Pay Agreed Upon Wages
G. Failure to Pay Wages Due Upon Termination
H. Breach of Contract

There are numerous items of Material Fact of proof by a preponderance of evidence that HPE employer intentionally discriminated against Plaintiff. Defendant failed to pay commissions owed and did not provide a timely final paycheck at time of termination. Commissions earned by Plaintiff and acknowledged by Defendant HPE, however not include in final paycheck.

Commissions earned by Plaintiff and not acknowledged by Defendant HPE, because Plaintiff MyComp numbers were inaccurate, Commissions that should hve been credited to Plaintiff, but were diverted to a male employee on Plaintiff same sales team. HPE violated law of Fair Labor Standards for unpaid wages and commissions. Informed manager Mr. Carlock regarding MyComp inaccuracies complained on March 30, 2016, April 2, 2016, May 6, 2016, May 18, 2016.

Although Carlock made the MyComp corrections for Stefanini's male colleagues, he did not do so for her. The problem that resulted from this is two-fold: (1) Stefanini is still owed commissions that she earned during her employment, and (2) the incorrect commission calculation directly impacted the assessment of Stefanini's performance. Stefanini believes that the total commissions she is owed is \$577,500. This is based on the deals she closed, including those which Carlock transferred to Stefanini's male colleagues before the commissions were paid out, as well as those commissions which were improperly calculated in MyComp. It does not, however, account for any of the partner commissions owed to Stefanini. A channel sale or partner sale occurs when an HPE customer buys from a channel and the sale is passed through HPE. The HPE sales manager is supposed to get credit for these sales, but are harder to track and due to HPE's poor accounting and channel alignment after the 2015 split from HP, Inc. Prior to Plaintiff's role at HP Enterprise their were no significant Networking or Cloud deals closed showing very minimal revenue. Plaintiff knew with her relationships she could get that to change. In November 2015 Radisys, Windstream, Level 3 Communications, account grew to \$2,000,000 in networking revenue then manager took her off the account. Plaintiff asked specifically to keep Comcast account because she knew she could generate significant revenue

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1 based on her relationships. Plaintiff brought in the right relationships with decision makers at
 2 CXO Exec and VPs. Plaintiff had been working the Comcast account for 8 months . As all
 3 fortune 500 accounts at HP Enterprise may encompass an extended sales/engineering team of 10-
 4 20 people per account. On on Feburay 9, 2016 Plaintiff requested engineering resources from
 5 Stephen Carlock ans Ken Meir as she needed technical support. On March 2, 2019 was given (1)
 6 sales person and (2) engineers for support on Comcast account.

7
 8 MyComp sales earning tool affected all of Hewlett Packard Sales Organization Worldwide. Mr.
 9 Carlock corrected MyComp inaccurate commission pay for male employees on her sales team
 10 but failed to correct hers. According to the report from Business Insider May 25, 2017 initially
 11 HPE Leadership said "Our salespeople have been paid accurately and on time, and it would be
 12 wholly inaccurate to suggest otherwise. While our recent separation activities have contributed to
 13 challenges with systems used by our sales force to have visibility. While our recent separation
 14 activities have contributed to challenges with the systems used by our sales force to have
 15 visibility into their compensation, these issues have no impact on their actual compensation. As a
 16 result of the challenges we have given impacted salespeople a choice between remaining on our
 17 draw program or moving to incentive compensation until all of these issues have been
 18 addressed." "Hewlett Packard Enterprise has apologized to thousands of employees in its North
 19 American sales organization for ongoing issues with the internal software that tracks their sales
 20 and calculates their commissions. In an all-hands meeting on April 27, VP and COO of HPE's
 21 Americas Enterprise Group Cheryl Brown detailed the issue with the software, called MyComp,
 22 according to a recording of the call heard by Business Insider. Brown said links between orders
 23 and customer account names were disconnected. HPE insists that salespeople have been paid; it's
 24 just the reporting in the software that is incorrect. HPE salespeople told Business Insider that
 25 HPE's software is having a problem tracking which salesperson gets credit for the sale, many of
 26 which happen through distributors and resellers. Aside from being an embarrassing issue for
 27 HPE externally, it has been a nightmare for some employees "whom have had to borrow money
 28 from HPE to make ends meet," the report said. Brown told salespeople that they would have the

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option to borrow against their anticipated commissions through June. Some salespeople have even left the company due to the inconvenience, according to Business Insider.”

A. Stephen Carlock Deposition

Exhibit 7 Email MyComp Error Reporting Single Digits

(P. 1, line 1-14)

Exhibit 8 Commissions Unpaid \$4,148,888.00 Radisys deals closed \$237,400.00, \$172,763.00, \$23,472.00 closed

(P. 1, line 1-33)

B. Arian Hurel Deposition

Exhibit 7 Business Insider MyComp Sales Software Issues

(P. 1, line 1-20), (P. 2 line 1-9)

Exhibit 8 \$4,148,888 Unpaid Commissions AT&T, Windstream, Level 3, Frontier, Comcast, BT, Salesforce, Autodesk, Dealertrack deals closed

(P.1, line 1-33)

Exhibit 17 MyComp Errors showing unpaid commissions of \$237,400.00 unpaid commissions for Radisys deal

(P.1)

Exhibit 20 MyComp Faulty Software Tool showing unpaid commissions \$27,265,068.00 for Accounts and Partners

(P. 1-5)

Exhibit 15 MyComp Unerreporting Numbers Were Wrong

(P. 1-2)

HPE statements are false P.2 paragraph 2 stating “Stefanini transitions from selling HP Networking (HPN) . As a member of Carlock’s team Stefanini was required to follow a Service Provider based sales model, which required her to make larger sales to a smaller group of bigger companies.” Stefanini’s responsibilities was a much higher revenue responsibility within HPN

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1 included managing globally HPE Strategic Fortune 500 accounts to include AT&T, Comcast,
 2 Radysis, Google, NTT, Salesforce.com, Akamai, CenturyLink, Adobe etc. In fact the accounts
 3 under her new manager Stephen Carlock was smaller sales to a smaller group of accounts. As a
 4 result of Stefanini's proven success and performance she was asked by HP leadership team to
 5 continue to manage her key accounts from HPN organization and approval was given for these
 6 accounts to be paid commissions under Stephen Carlock Srevcie provider team.
 7

8 The key documents are "the sales letter," the "sales plan" and all the "policies" related to
 9 compensation. All the conditions have to be met for the commission to be earned.
 10

11 Company reserves the right to change or cancel the plan on 30-day's notice. I am
 12 providing by attachment the "sales letter," and "sales plan". The current sales policy is
 13 effective from November 1, 2015 until modified. [HPE's fiscal year ends 10-31-16]
 14

- 15 ■ A "sales letter" spells out the performance expectations for the individual
 sales person under the applicable "Sales Plan."
- 16 ■ 'TIA' is the target incentive amount. This TIA is adjusted for weighted
 metrics.
- 17 ■ The "slope" is the rate of increase over the base sales volume. 1:1 for
 TIA, and an "accelerator" slope for over TIA. Standard accelerator is
 18 2.5x. [The accelerator applies to sales over quota].
- 19 ■ These terms apply across product lines and quota goals for that product
 line. The sales letter determines the actual % incentives and slopes
 20 applicable for a particular Sales Manager.

- 21 1) Upon meeting TIA for fiscal year 2016 at assigned quota \$3,315,022, Ms. Stefanini
 22 earned \$100,000 in commissions. This converts to a TIA of 3% payable at whatever
 volume of gross sales she made below \$3,315,022.
- 23 2) Over \$3,315,022 a 2.5% "accelerator" was to apply. This is the new "slope." The slope
 24 is 3% plus 2.5% or 5.5%.
- 25 3) Actual Sales ending 10/31/2016 are summarized as \$13,725,314 sold direct and through
 26 distributors
 27
 28

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1 HPE MyComp is defined as the Computer Software Tool used to track sales commissions
2 through partners and distributors.

3 Mr. Carlock continued to knowingly use Plaintiff incorrect MyComp numbers to justify
4 allegations that the Plaintiff was underperforming. MyComp Stefanini coomplained about
5 Mycomp errors Carlock fixed male employees howver refused to fix Stefanini's. Please refer to
6 Exhibit showing proof of POs closed by Stefanini and HPE non-payment of commission to
7 include Radysis, .HPE failed to pay Stefanini her comissions due in accordance with HPE Sales
8 Compensation Policy and conrtinues to falsify information. Plaintiff MyComp numbers were
9 never corrected resulting in underperforming of wages Palintiff earned and the underpayment of
10 wages to Plaintiff.
11

12
13 HP Enterprise Company's argument not only wrongly implies that there would be no waiver or
14 modification or other contract sales comisisons as a matter of law, it wrongly that non-lawyer
15 salespeople like Stefanini should have known that at the time, rendering their reliance
16 unreasonable. Surely someone in Stefanini's shoes can reasonably rely on the HPE MyComp
17 Software Compensation Tool used companywide to payout correct commisions owed without
18 undertaking a legal analysis of whether the company's used to determine HPE revenue's and
19 commisisons would have resulted showing inaccurate earnings for HPE companywide. As a
20 matter of California law, a question that is not answered even today. Why should HPE take
21 provledge and not pay employees due to company faulty pay systems?
22

23
24 Plaintiff wage claims (failure to pay comisisons, failue to provide accurate pay stubs and faliure
25 to pay all wages upon termination) are based on numerous hours of work. Employees must me
26 paid agreed upon wage (Cal Labor Code 119, 510), Paystubs must accurately reflect the time
27 worked for the period (cal Labor Coe 226). Upon termination, Defendants were obligated to
28

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1 immediately pay Plaintiff all wages owed (Cal Labor Code 201 – 203). It is undisputed that HPE
 2 withheld wages upon termination and commissions were not paid due to MyComp Faulty Software
 3 Compensation Tool.

4
 5 There are disputed issues of material fact as to the amount of wages owed and commissions
 6 unpaid due to account transfers to male employees and MyComp Faulty Sales Compensation
 7 Software. There is no legal basis to grant Summary Judgment

8
 9 A. Arian Hurel Deposition

10 Exhibit 4

(P. 1, line 1-8)

11 Exhibit 6

(P. 1, line 1-21)

12 (P.2, line 1-27)

13 (P.19, line 17-25)

(P.20, line 1-8)

14 B. Stephen Carlock Deposition

15 (P. 5, line 1-7)

16 (P. 6, line 1-8, line 20-25)

(P. 32, line 23-25)

17 (P. 33, line 1-12)

18 (P. 36, line 5-19)

(P. 65, line 11-18)

19 Exhibit 13

(P.1-3)

20 C. Vicki Stefanini Deposition

21 (P. 22, line 7-25)

22 (P. 23, line 14-25)

(P. 24, line 1-6)

23 (P. 25, line 4-10)

(P. 27, line 9-13)

24
 25 Date: December 24, 2019

Address: PO BOX 54124, SAN JOSE, CA 95154

26 Phone Number: 408-887-5943

27 Signature: 

28 Printed name: VICKI STEFANINI

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